

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In the Matter of the Tax
Indebtedness of,

RUSSELL M. MACDONALD and
RENE C. MACDONALD

NO. CV-06-299-RHW

**ORDER DENYING RUSSELL M.
MACDONALD'S MOTION TO
ALTER OR AMEND THE
JUDGMENT**

Before the Court is Russell M. MacDonald's Motion to Alter or Amend Judgment (Ct. Rec. 13). The motion was heard without oral argument.

On March 19, 2007, the Court entered an order denying Russell MacDonald's Motion to Quash and Vacate IRS Summons and Show Cause Order for Lack of Subject Matter Jurisdiction, denying his Motion for Discovery, and approving the judicial levy requested by the Government (Ct. Rec. 12). Mr. MacDonald nows asks the Court to reconsider that order because, according to Mr. MacDonald, the Government failed to provide him with the mandatory statutory Notice of Federal Tax Lien. Mr. MacDonald did not raise this argument in his response to the Court's show cause order.

"[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (quoting *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665

1 (9th Cir. 1999)). It is considered an “extraordinary remedy, to be used sparingly in
2 the interests of finality and conservation of judicial resources.” *Id.* A motion
3 under Rule 59(e) “may *not* be used to raise arguments or present evidence for the
4 first time when they could reasonably have been raised earlier in the litigation.” *Id.*
5 (emphasis in original).

6 Rule 60(b)(1) provides that a court may relieve a party from a final judgment
7 on the basis of excusable neglect. “[T]he determination of whether neglect is
8 excusable is an equitable one that depends on at least four factors: (1) the danger of
9 prejudice to the opposing party; (2) the length of the delay and its potential impact
10 on the proceedings; (3) the reason for the delay; and (4) whether the movant acted
11 in good faith.” *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir.
12 2000).

13 In his motion, Mr. MacDonald is raising new arguments that could
14 reasonably have been raised earlier in the litigation, and, therefore, are not properly
15 before the Court. Although Mr. MacDonald implies that he was unable to make
16 these arguments earlier due to misinformation given to him by his advisors, this
17 alone is not sufficient for the Court to reopen this case. *Engleson v. Burlington*
18 *Northern R.R. Co.*, 972 F.2d 1038, 1048 (9th Cir. 1992) (quoting *Kagan v.*
19 *Caterpillar Tractor Co.*, 795 F.2d 601, 607 (7th Cir. 1986)) (“Neither ignorance nor
20 carelessness on the part of the litigant or his attorney provide grounds for relief
21 under Rule 60(b)(1).”)

22 Accordingly, **IT IS HEREBY ORDERED:**

23 1. Russell MacDonald’s Motion to Alter or Amend the Judgment (Ct. Rec.
24 13) is **DENIED**.

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**ORDER DENYING RUSSELL M. MACDONALD’S MOTION TO ALTER
OR AMEND THE JUDGMENT ~ 2**

1 **IT IS SO ORDERED.** The District Court Executive is directed to enter
2 this Order and forward copies to counsel and Rene C. MacDonald and Russell M.
3 MacDonald.

4 **DATED** this 10th day of April, 2007.

5 *S/ Robert H. Whaley*

6 **ROBERT H. WHALEY**
7 Chief United States District Judge

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